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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Richard Alan Russell,

10 Plaintiff,

11 v.

12 University of Arizona, et al.

13 Defendant.
14

No. CV 20-28-TUC-JAS (JR)

ORDER

15 **DISCUSSION**

16 Pending before the Court is a Report and Recommendation issued by United States
17 Magistrate Judge Rateau. Plaintiff filed objections to the Report and Recommendation.¹

18 As a threshold matter, as to any new evidence, arguments, and issues that were not
19 timely and properly raised before United States Magistrate Judge Rateau, the Court
20 exercises its discretion to not consider those matters and considers them waived. *United*
21 *States v. Howell*, 231 F.3d 615, 621-623 (9th Cir. 2000) (“[A] district court has discretion,
22 but is not required, to consider evidence presented for the first time in a party's objection
23 to a magistrate judge's recommendation . . . [I]n making a decision on whether to consider
24 newly offered evidence, the district court must . . . exercise its discretion . . . [I]n providing
25 for a *de novo* determination rather than *de novo* hearing, Congress intended to permit
26 whatever reliance a district judge, in the exercise of sound judicial discretion, chose to
27 place on a magistrate judge's proposed findings and recommendations . . . The magistrate

28 ¹ Unless otherwise noted by the Court, internal quotes and citations have been omitted
when citing authority throughout this Order.

1 judge system was designed to alleviate the workload of district courts . . . To require a
2 district court to consider evidence not previously presented to the magistrate judge would
3 effectively nullify the magistrate judge's consideration of the matter and would not help to
4 relieve the workload of the district court. Systemic efficiencies would be frustrated and the
5 magistrate judge's role reduced to that of a mere dress rehearsal if a party were allowed to
6 feint and weave at the initial hearing, and save its knockout punch for the second round . .
7 . Equally important, requiring the district court to hear evidence not previously presented
8 to the magistrate judge might encourage sandbagging. [I]t would be fundamentally unfair
9 to permit a litigant to set its case in motion before the magistrate, wait to see which way
10 the wind was blowing, and—having received an unfavorable recommendation—shift gears
11 before the district judge.”); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1122 (9th Cir.
12 2003) (“Finally, it merits re-emphasis that the underlying purpose of the Federal
13 Magistrates Act is to improve the effective administration of justice.”).²

14 As to the objections filed by Plaintiff, the Court has conducted a *de novo* review of
15 the record. *See* 28 U.S.C. § 636(b)(1)(C) (“Within fourteen days after being served with
16 [the Report and Recommendation], any party may serve and file written objections to such
17 proposed findings and recommendations as provided by rules of court. A judge of the court
18 shall make a *de novo* determination of those portions of the report or specified proposed
19 findings or recommendations to which objection is made. A judge of the court may accept,
20 reject, or modify, in whole or in part, the findings or recommendations made by the
21 magistrate judge. The judge may also receive further evidence or recommit the matter to
22 the magistrate judge with instructions.”).

23 In addition to reviewing the Report and Recommendation and any objections and
24 relevant briefing thereto, the Court’s *de novo* review of the record includes review of the
25 record and authority before United States Magistrate Judge Rateau which led to the Report
26 and Recommendation in this case.

27 ² Assuming, *arguendo*, that such matters were not subject to waiver, the Court (in the
28 alternative) has nonetheless conducted a *de novo* review, and upon review of the record
and authority herein, rejects these issues and adopts the Report and Recommendation in its
entirety.

1 Upon *de novo* review of the record and authority herein, the Court finds Plaintiff's
2 objections to be without merit, rejects those objections, and adopts United States
3 Magistrate Judge Rateau's Report and Recommendation in its entirety. *See, e.g., United*
4 *States v. Rodriguez*, 888 F.2d 519, 522 (7th Cir. 1989) ("Rodriguez is entitled by statute to
5 *de novo* review of the subject. Under *Raddatz* [447 U.S. 667 (1980)] the court may provide
6 this on the record compiled by the magistrate. Rodriguez treats adoption of the magistrate's
7 report as a sign that he has not received his due. Yet we see no reason to infer abdication
8 from adoption. On occasion this court affirms a judgment on the basis of the district court's
9 opinion. Affirming by adoption does not imply that we have neglected our duties; it means,
10 rather, that after independent review we came to the same conclusions as the district judge
11 for the reasons that judge gave, rendering further explanation otiose. When the district
12 judge, after reviewing the record in the light of the objections to the report, reaches the
13 magistrate's conclusions for the magistrate's reasons, it makes sense to adopt the report,
14 sparing everyone another round of paper."); *Bratcher v. Bray-Doyle Independent School*
15 *Dist. No. 42 of Stephens County, Okl.*, 8 F.3d 722, 724 (10th Cir. 1993) ("*De novo* review
16 is statutorily and constitutionally required when written objections to a magistrate's report
17 are timely filed with the district court . . . The district court's duty in this regard is satisfied
18 only by considering the actual testimony [or other relevant evidence in the record], and not
19 by merely reviewing the magistrate's report and recommendations . . . On the other hand,
20 we presume the district court knew of these requirements, so the express references to *de*
21 *novo* review in its order must be taken to mean it properly considered the pertinent portions
22 of the record, absent some clear indication otherwise . . . Plaintiff contends . . . the district
23 court's [terse] order indicates the exercise of less than *de novo* review . . . [However,]
24 brevity does not warrant look[ing] behind a district court's express statement that it engaged
25 in a *de novo* review of the record."); *Murphy v. International Business Machines Corp.*, 23
26 F.3d 719, 722 (2nd Cir. 1994) ("We . . . reject Murphy's procedural challenges to the
27 granting of summary judgment . . . Murphy's contention that the district judge did not
28 properly consider her objections to the magistrate judge's report . . . lacks merit. The judge's

1 brief order mentioned that objections had been made and overruled. We do not construe
 2 the brevity of the order as an indication that the objections were not given due
 3 consideration, especially in light of the correctness of that report and the evident lack of
 4 merit in Murphy's objections."); *Gonzales-Perez v. Harper*, 241 F.3d 633 (8th Cir. 2001)
 5 ("When a party timely objects to a magistrate judge's report and recommendation, the
 6 district court is required to make a *de novo* review of the record related to the objections,
 7 which requires more than merely reviewing the report and recommendation . . . This court
 8 presumes that the district court properly performs its review and will affirm the district
 9 court's approval of the magistrate's recommendation absent evidence to the contrary . . .
 10 The burden is on the challenger to make a *prima facie* case that *de novo* review was not
 11 had."); *Brunig v. Clark*, 560 F.3d 292, 295 (5th Cir. 2009) ("Brunig also claims that the
 12 district court judge did not review the magistrate's report *de novo* . . . There is no evidence
 13 that the district court did not conduct a *de novo* review. Without any evidence to the
 14 contrary . . . we will not assume that the district court did not conduct the proper review.").³

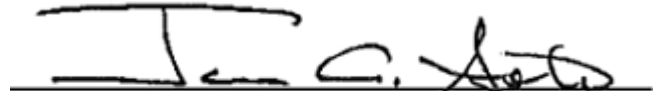
16 ³ See also *Pinkston v. Madry*, 440 F.3d 879, 893-894 (7th Cir. 2006) (the district court's
 17 assurance, in a written order, that the court has complied with the *de novo* review
 18 requirements of the statute in reviewing the magistrate judge's proposed findings and
 19 recommendation is sufficient, in all but the most extraordinary of cases, to resist assault on
 20 appeal; emphasizing that "[i]t is clear that Pinkston's argument in this regard is nothing
 21 more than a collateral attack on the magistrate's reasoning, masquerading as an assault on
 22 the district court's entirely acceptable decision to adopt the magistrate's opinion . . .");
 23 *Garcia v. City of Albuquerque*, 232 F.3d 760 (10th Cir. 2000) ("The district court's order
 24 is terse . . . However, neither 28 U.S.C. § 636(b)(1) nor Fed.R.Civ.P. 72(b) requires the
 25 district court to make any specific findings; the district court must merely conduct a *de*
 26 *novo* review of the record . . . It is common practice among district judges . . . to [issue a
 27 terse order stating that it conducted a *de novo* review as to objections] . . . and adopt the
 28 magistrate judges' recommended dispositions when they find that magistrate judges have
 dealt with the issues fully and accurately and that they could add little of value to that
 analysis. We cannot interpret the district court's [terse] statement as establishing that it
 failed to perform the required *de novo* review . . . We hold that although the district court's
 decision is terse, this is insufficient to demonstrate that the court failed to review the
 magistrate's recommendation *de novo*"); *Goffman v. Gross*, 59 F.3d 668, 671 (7th Cir.
 1995) ("The district court is required to conduct a *de novo* determination of those portions
 of the magistrate judge's report and recommendations to which objections have been filed.
 But this *de novo* determination is not the same as a *de novo* hearing . . . [I]f following a
 review of the record the district court is satisfied with the magistrate judge's findings and
 recommendations it may in its discretion treat those findings and recommendations as its
 own.").

1 **CONCLUSION**

2 Accordingly, IT IS HEREBY ORDERED as follows:

- 3 (1) United States Magistrate Judge Rateau's Report and Recommendation (Doc. 52) is
4 accepted and adopted in its entirety.
5 (2) Plaintiff's objections are rejected.
6 (3) This case is dismissed without prejudice; all other pending motions are denied.
7 (4) The Clerk of the Court shall enter judgment and close the file in this case.

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9 Dated this 24th day of March, 2021.

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13 Honorable James A. Soto
14 United States District Judge
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